

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

7143

FILE: B-191901

DATE: September 27, 1978

MATTER OF: Mars Signal Light Company

DIGEST:

1. While protester denies receipt of written notice of award to other bidder, agency's un rebutted contention that oral notice was given is sufficient basis to conclude that protest filed more than 10 days thereafter is untimely under § 20.2 (b)(2) of GAO's Bid Protest Procedures.
2. Where protest is filed initially with procuring activity, subsequent protest to GAO not filed within 10 days of protester's notice of initial adverse agency action (refusal to consider protest and proceeding with procurement) is untimely.

By letter dated May 2, 1978, received in our Office May 10, 1978, Mars Signal Light Company (Mars) protested the award of a contract for vehicular warning lights to Julian A. McDermott Corporation (McDermott) under invitation for bids (IFB) DLA-400-78-B-0581, a combined small business-labor surplus area set-aside, issued by the Defense General Supply Center (DGSC).

Mars states in its protest letter that DGSC never notified it that an award had been made on March 21, 1978. Instead, Mars states that it first learned of the award on April 27, 1978, when the contracting officer mentioned the award to a Mars consultant in a telephone conversation. Additionally, Mars states that its letter to DGSC of February 22, 1978, as supplemented by letter dated March 3, 1978, was a protest. That letter requested that no contract be awarded under the instant IFB.

In rebuttal, DGSC states that it did not consider Mars' letter of February 22 a protest and, consequently, it was not answered. DGSC also states that a form (DGSC FL13) notifying Mars of its unsuccessful offer was mailed on

March 21, 1978, and with a telephone conversation concerning Mars' bid award to McDermott of the un-
 awarded portion of the procurement was made on
 March 21, 1978. Mars was also told orally that
 McDermott was being given the first opportunity to
 make an offer with respect to the labor set-aside
 portion of the procurement. Mars denies receipt of
 the letter, but does not deny receipt of the telephone
 call on March 21. DGSC contends that Mars' protest
 filed in our Office on May 10, 1978, is untimely under
 48 C.F.R. § 20.2(b)(2) (1978) because Mars was notified
 of the awards on March 21, 1978.

While Mars has denied receipt of the March 24
 written notice of award, it has not denied the fact
 that it was notified of the award and proposed award
 by the March 21 telephone call. In this connection,
 the action is sufficient notification of the basis
 for protest. The Public Research Institute of the
 Center for Naval Analysis of the University of Rochester,
 B-15559, August 15, 1977, 77-2 CPD 116. Accordingly,
 March 21 is the date by which the timeliness of Mars'
 protest is to be measured.

Our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(2)
 (1978), provide in pertinent part:

"* * * [B]id protests shall be filed
 not later than 10 days after the basis for
 protest is known or should have been known,
 whichever is earlier."

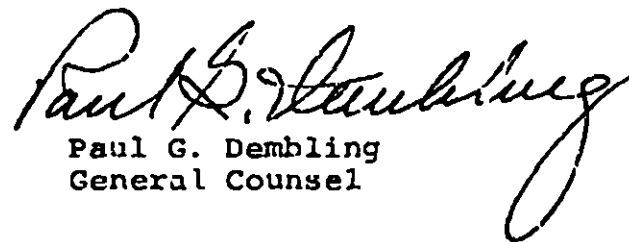
Since Mars received notification of the award and pro-
 posed award on March 21, 1978, its protest filed here on
 May 10, 1978, is clearly untimely under the quoted section.

Even if Mars' letter of February 22 to the agency is
 considered a protest, its protest here is untimely. 4
 C.F.R. § 20.2(a) requires that matters protested initially
 to the procuring activity must be protested to our Office
 within 10 days of the protester's receipt of actual or
 constructive notice of the agency's "initial adverse
 action" on the protest. Even if DGSC is going ahead with the
 procurement, despite its receipt of Mars' letter, consti-
 tuted initial adverse action. Carrier Corporation,
 B-155687, August 16, 1977, 77-2 CPD 111. Therefore, since

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Mars did not protest the award until May 10, its protest is untimely and will not be considered on the merits.


Paul G. Dembling
General Counsel